

House Bill 718

By: Representative Holmes of the 61st

A BILL TO BE ENTITLED
AN ACT

To amend Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to licensing of mortgage lenders and mortgage brokers, so as to provide for authorization of mortgage loan officers; to provide for a definition; to provide for procedures, conditions, and limitations; to provide for powers, duties, and authority of the Department of Banking and Finance; to provide for other matters relative to the foregoing; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to licensing of mortgage lenders and mortgage brokers, is amended by revising Code Section 7-1-1000, relating to definitions, as follows:

"7-1-1000.

(a) This article shall be known and may be cited as the 'Georgia Residential Mortgage Act.'

(b) As used in this article, the term:

(1) 'Affiliate' or 'person affiliated with' means, when used with reference to a specified person, a person who directly, indirectly, or through one or more intermediaries controls, is controlled by, or is under common control with the person specified. Any beneficial owner of 20 percent or more of the combined voting power of all classes of voting securities of a person or any executive officer, director, trustee, joint venturer, or general partner of a person is an affiliate of such person unless the shareholder, executive officer, director, trustee, joint venturer, or general partner shall prove that he or she in fact does not control, is not controlled by, or is not under common control with such person.

(2) 'Audited financial statement' means the product of the examination of financial statements in accordance with generally accepted auditing standards by an independent certified public accountant, which product consists of an opinion on the financial statements indicating their conformity with generally accepted accounting principles.

1 (3) 'Commitment' or 'commitment agreement' means a statement by a lender required to
2 be licensed or registered under this article that sets forth the terms and conditions upon
3 which the lender is willing to make a particular mortgage loan to a particular borrower.

4 (4) 'Control,' including 'controlling,' 'controlled by,' and 'under common control with,'
5 means the direct or indirect possession of the power to direct or cause the direction of the
6 management and policies of a person, whether through the ownership of voting securities,
7 by contract, or otherwise.

8 (5) 'Executive officer' means the chief executive officer, the president, the principal
9 financial officer, the principal operating officer, each vice president with responsibility
10 involving policy-making functions for a significant aspect of a person's business, the
11 secretary, the treasurer, or any other person performing similar managerial or supervisory
12 functions with respect to any organization whether incorporated or unincorporated.

13 (6) 'Extortionate means' means the use or the threat of violence or other criminal means
14 to cause harm to the person, reputation of the person, or property of the person.

15 ~~(6.1) 'Georgia Residential Mortgage Act' means this article.~~

16 (7) 'License' means a license issued by the department under this article to act as a
17 mortgage lender or mortgage broker.

18 (7.1) 'Loan officer' means a person who acts as an employee and not as an independent
19 contractor to assist a licensee in performing one or more of the following activities to or
20 for a consumer: accepting or offering to accept a mortgage loan application, soliciting
21 a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage
22 loan commitments or interest rate guarantee agreements, or advising on any aspect of a
23 mortgage loan transaction, whether such acts are done through contact by telephone, by
24 electronic means, by mail, or in person with consumers. Such term shall not include or
25 apply to a lender or broker who is an approved FHA Title II supervised, nonsupervised,
26 government, or loan correspondent mortgagee with an audited net worth of at least
27 \$150,000.00.

28 (8) 'Lock-in agreement' means a written agreement whereby a lender or a broker required
29 to be licensed or registered under this article guarantees for a specified number of days
30 or until a specified date the availability of a specified rate of interest for a mortgage loan,
31 a specified formula by which the rate of interest will be determined, or a specific number
32 of discount points if the mortgage loan is approved and closed within the stated period
33 of time.

34 (9) 'Makes a mortgage loan' means to advance funds, offer to advance funds, or make a
35 commitment to advance funds to an applicant for a mortgage loan.

(10) 'Misrepresent' means to make a false statement of a substantive fact. Misrepresent may also mean to intentionally engage in any conduct which leads to a false belief which is material to the transaction.

(11) 'Mortgage broker' means any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others, or offers to solicit, process, place, or negotiate mortgage loans for others or who closes mortgage loans which may be in the mortgage broker's own name with funds provided by others and which loans are assigned within 24 hours of the funding of the loans to the mortgage lenders providing the funding of such loans.

(12) 'Mortgage lender' means any person who directly or indirectly makes, originates, or purchases mortgage loans or who services mortgage loans.

(13) 'Mortgage loan' means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust, or other document representing a security interest or lien upon any interest in one-to-four family residential property located in Georgia, regardless of where made, including the renewal or refinancing of any such loan.

(14) 'Person' means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

(15) 'Registrant' means any person required to register pursuant to Code Sections 7-1-1001 and 7-1-1003.2.

(16) 'Residential property' means improved real property used or occupied, or intended to be used or occupied, as the principal residence of a natural person. Such term does not include rental property or second homes.

(17) 'Service a mortgage loan' means the collection or remittance for another or the right to collect or remit for another of payments of principal, interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

(18) 'Ultimate equitable owner' means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation or any other form of business organization, regardless of whether such natural person owns or controls such ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint-stock companies, other entities or devices, or any combination thereof."

SECTION 2.

Said article is further amended by revising paragraph (11) of Code Section 7-1-1001, relating to exemption for certain persons and entities, as follows:

“(11) A natural person who is not a loan officer and who is employed by a licensed mortgage broker, a licensed mortgage lender, or any person exempted from the licensing requirements of this article when acting within the scope of employment and under the supervision of the licensee or exempted person as an employee and not as an independent contractor. To be exempt, a natural person must be employed by only one such employer and must be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004. All employees, including loan officers, must be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004;”.

SECTION 3.

Said article is further amended by inserting new subsections (d), (e), (f), and (g) at the end of Code Section 7-1-1002, relating to prohibition of transaction of business without a license, to read as follows:

"(d)(1) On or after July 1, 2007, it is unlawful for any natural person to act as a loan officer without first obtaining authorization from the department. The department may provide for a phase-in of currently qualified persons. Loan officers may obtain authorization by:

(A) Providing to their employer a background check, dated within 90 days from date of initial employment from the Georgia Crime Information Center, which shows no offenses prohibited in Code Section 7-1-1004; and

(B) Providing to their employer certification of the education or experience required by Georgia law and regulation. Such requirements shall include at least one year of experience immediately preceding July 1, 2007, performing one or more duties of a loan officer for a licensee or exemptee. In the alternative, satisfactory completion of a minimum of eight hours of education in accordance with education requirements for licensed mortgage brokers shall satisfy the loan officer education requirements of this subparagraph. Providers of education shall be approved by the department and may not certify satisfactory completion of loan officer education requirements until such loan officer has passed a test reflecting comprehension of the material.

(2) An employer shall provide a current list to the department of all loan officers who have met the requirements of this subsection. Employers shall be required to check the department's website to verify that no disqualifying final orders have been issued against any prospective loan officer.

(3) It is unlawful for any person to employ or compensate a loan officer unless the loan officer has met the requirements for being authorized by the department as provided in this subsection.

(e) The authorization of a loan officer shall not be effective during any period when the loan officer is not employed by a mortgage broker or mortgage lender licensed under this article. When a loan officer ceases to be employed by a mortgage broker or mortgage lender licensed under this article, the loan officer and the mortgage broker or mortgage lender licensed under this article by whom that person is employed shall promptly notify the department in writing. When a loan officer is to be employed, the employer shall promptly notify the department of the hiring and certify to the employee's qualifications as provided in this Code section. A loan officer shall not be employed simultaneously by more than one mortgage broker or mortgage lender licensed under this article.

(f) Each mortgage broker or mortgage lender licensed under this article shall maintain on file with the department a list of all loan officers who are qualified and employed with the mortgage broker or mortgage lender. The department shall maintain on its website the ongoing list of all authorized loan officers."

SECTION 4.

Said article is further amended by revising subsections (c), (d), and (i) of Code Section 7-1-1004, relating to requirements relative to licensees and registrants, as follows:

"(c) The department may establish by rule or regulation minimum education or experience requirements for an applicant for a mortgage broker license or renewal of such a license or for an authorized loan officer.

(d) The department may not issue or may revoke a license or authorization if it finds that the applicant or licensee, or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant or licensee or any individual who directs the affairs or establishes policy for the applicant or licensee, has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime which, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, unless and until such plea of guilty, or such decision, judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other

1 pardoning authority in the jurisdiction where the conviction was had or shall have received
2 an official certification or pardon granted by the State Board of Pardons and Paroles which
3 removes the legal disabilities resulting from such conviction and restores civil and political
4 rights in this state."

5 "(i) The department may not issue a license to and may revoke a license from an applicant
6 or licensee if such person employs any other person against whom a final cease and desist
7 order has been issued within the preceding three years, if such order was based on a
8 violation of Code Section 7-1-1013 or based on the conducting of a mortgage business
9 without a required license or authorization, or whose license has been revoked within three
10 years of the date such person was hired. Each applicant and licensee shall, before hiring
11 an employee, examine the department's public records to determine that such employee is
12 not subject to the type of cease and desist order described in this subsection."

13 SECTION 5.

14 Said article is further amended by revising subsection (b) of Code Section 7-1-1005, relating
15 to renewal of licenses and registrations, as follows:

16 "(b) Any licensee or registrant making proper application, including all supporting
17 documents, list of loan officers, moneys owed to the department, and all applicable fees
18 required by this article and any regulations promulgated by the department, for a license
19 or registration renewal to operate during the following license year and filing the
20 application prior to April 1 shall be permitted to continue to operate pending final approval
21 or disapproval of the application for the license or registration renewal for the following
22 year if final approval or disapproval is not granted prior to July 1."

23 SECTION 6.

24 Said article is further amended by revising Code Section 7-1-1011, relating to annual fees,
25 as follows:

26 "7-1-1011.

27 (a) The department may, by regulation, prescribe annual fees to be paid by licensees, and
28 registrants, and persons required to be authorized under this article, which fees shall be set
29 at levels necessary to defray costs and expenses incurred by the state in providing the
30 examinations and supervision required by this article and which fees may vary according
31 to whether a person is a licensee, or registrant, or person required to be authorized under
32 this article or is a mortgage broker or a mortgage lender and according to the class of
33 license issued to a mortgage broker or mortgage lender.

34 (b)(1) As used in this subsection, the term 'collecting agent' means the person listed as
35 the secured party on a security deed or other loan document that establishes a lien on the

1 residential real property taken as collateral at the time of the closing of the mortgage loan
2 transaction.

3 (2) There shall be imposed on the closing of every mortgage loan subject to regulation
4 under this article which, as defined in Code Section 7-1-1000, includes all mortgage
5 loans, whether or not closed by a licensee or registrant, a fee of \$6.50. The fee shall be
6 paid by the borrower to the collecting agent at the time of closing of the mortgage loan
7 transaction. The collecting agent shall remit the fee to the department at the time and in
8 the manner specified by regulation of the department. Revenue collected by the
9 department pursuant to this subsection shall be deposited in the general fund of the state.

10 (3) The fee imposed by this subsection shall be a debt from the borrower to the collecting
11 agent until such assessment is paid and shall be recoverable at law in the same manner
12 as authorized for the recovery of other debts. Any collecting agent who neglects, fails,
13 or refuses to collect the fee imposed by this subsection shall be liable for the payment of
14 the fee."

15 SECTION 7.

16 Said title is further amended by revising Code Section 7-1-1013, relating to the prohibition
17 of certain acts, as follows:

18 "7-1-1013.

19 It is prohibited for any person transacting a mortgage business in or from this state,
20 including any person required to be licensed, ~~or registered,~~ or authorized under this article
21 and any person exempted from the licensing or registration requirements of this article
22 under Code Section 7-1-1001, to:

23 (1) Misrepresent the material facts, make false statements or promises, or submit false
24 statements or documents likely to influence, persuade, or induce an applicant for a
25 mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or, through agents
26 or otherwise, pursue a course of misrepresentation by use of fraudulent or unauthorized
27 documents or other means to the department or anyone;

28 (2) Misrepresent or conceal or cause another to misrepresent or conceal material factors,
29 terms, or conditions of a transaction to which a mortgage lender or broker is a party,
30 pertinent to an applicant or application for a mortgage loan or a mortgagor;

31 (3) Fail to disburse funds in accordance with a written commitment or agreement to
32 make a mortgage loan;

33 (4) Improperly refuse to issue a satisfaction of a mortgage loan;

34 (5) Fail to account for or deliver to any person any personal property obtained in
35 connection with a mortgage loan such as money, funds, deposit, check, draft, mortgage,
36 or other document or thing of value which has come into the possession of the mortgage

1 lender or broker and which is not the property of the mortgage lender or broker, or which
2 the mortgage lender or broker is not in law or at equity entitled to retain;

3 (6) Engage in any transaction, practice, or course of business which is not in good faith
4 or fair dealing, or which operates a fraud upon any person, in connection with the
5 attempted or actual making of, purchase of, transfer of, or sale of any mortgage loan;

6 (7) Engage in any fraudulent home mortgage underwriting practices;

7 (8) Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor
8 to sign a security deed, note, loan application, or other pertinent financial disclosure
9 documents with any blank spaces to be filled in after it has been signed, except blank
10 spaces relating to recording or other incidental information not available at the time of
11 signing;

12 (9) Make, directly or indirectly, any residential mortgage loan with the intent to foreclose
13 on the borrower's property. For purposes of this paragraph, there is a presumption that
14 a person has made a residential mortgage loan with the intent to foreclose on the
15 borrower's property if the following circumstances can be demonstrated:

16 (A) Lack of substantial benefit to the borrower;

17 (B) Lack of probability of full payment of the loan by the borrower; and

18 (C) A significant proportion of similarly foreclosed loans by such person;

19 (10) Provide an extension of credit or collect a mortgage debt by extortionate means; or

20 (11) Purposely withhold, delete, destroy, or alter information requested by an examiner
21 of the department or make false statements or material misrepresentations to the
22 department."

23 SECTION 8.

24 Said article is further amended by revising Code Section 7-1-1018, relating to cease and
25 desist orders, as follows:

26 "7-1-1018.

27 (a) Whenever it shall appear to the department that any person required to be licensed,
28 authorized, or registered or required to file a notification statement under this article or
29 employed by a licensee or registrant pursuant to Code Section 7-1-1001 or who would be
30 covered by the prohibitions in Code Section 7-1-1013 has violated any law of this state or
31 any order or regulation of the department, the department may issue an initial written order
32 requiring such person to cease and desist immediately from such unauthorized practices.
33 Such cease and desist order shall be final 20 days after it is issued unless the person to
34 whom it is issued makes a written request within such 20 day period for a hearing. The
35 hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia
36 Administrative Procedure Act.' A cease and desist order to an unlicensed or unauthorized

1 person that orders them to cease doing a mortgage business without the appropriate license
2 or department authorization shall be final 30 days from the date of issuance, and there shall
3 be no opportunity for an administrative hearing. If the proper license or evidence of
4 exemption or valid employment status during the time of the alleged offense is delivered
5 to the department within the 30 day period, the order shall be rescinded by the department.
6 If a cease and desist order is issued to a person who has been sent a notice of bond
7 cancellation and if the bond is reinstated or replaced and such documentation is delivered
8 to the department within the 30 day period following the date of issuance of the order, the
9 order shall be rescinded. If the notice of reinstatement of the bond is not received within
10 the 30 days, the license shall expire at the end of the 30 day period and the person shall be
11 required to make a new application for license and pay the applicable fees. In the case of
12 an unlawful purchase of mortgage loans, such initial cease and desist order to a purchaser
13 shall constitute the knowledge required under subsection (b) of Code Section 7-1-1002 for
14 any subsequent violations.

15 (b) Whenever a person shall fail to comply with the terms of an order of the department
16 which has been properly issued under the circumstances, the department, upon notice of
17 three days to such person, may, through the Attorney General, petition the principal court
18 for an order directing such person to obey the order of the department within the period of
19 time as shall be fixed by the court. Upon the filing of such petition, the court shall allow
20 a motion to show cause why it should not be granted. Whenever, after a hearing upon the
21 merits or after failure of such person to appear when ordered, it shall appear that the order
22 of the department was properly issued, the court shall grant the petition of the department.

23 (c) Any person who violates the terms of any order issued pursuant to this Code section
24 shall be liable for a civil penalty not to exceed \$1,000.00. Each day during which the
25 violation continues shall constitute a separate offense. In determining the amount of
26 penalty, the department shall take into account the appropriateness of the penalty relative
27 to the size of the financial resources of such person, the good faith efforts of such person
28 to comply with the order, the gravity of the violation, the history of previous violations by
29 such person, and such other factors or circumstances as shall have contributed to the
30 violation. The department may at its discretion compromise, modify, or refund any penalty
31 which is subject to imposition or has been imposed pursuant to this Code section. Any
32 person assessed as provided in this subsection shall have the right to request a hearing into
33 the matter within ten days after notification of the assessment has been served upon the
34 person involved; otherwise, such penalty shall be final except as to judicial review as
35 provided in Code Section 7-1-90.

(d) Initial judicial review of the decision of the department entered pursuant to this Code section or Code Section 7-1-1017 shall be available solely in the superior court of the county of domicile of the department.

(e) All penalties and fines recovered by the department as authorized by subsection (g) of this Code section shall be paid into the state treasury to the credit of the general fund; provided, however, that the department at its discretion may remit such amounts recovered, net of the cost of recovery, if it makes an accounting of all such costs and expenses of recovery in the same manner as prescribed for judgments received through derivative actions pursuant to the provisions of Code Section 7-1-441.

(f) For purposes of this Code section, the term 'person' includes any officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section.

(g) In addition to any other administrative penalties authorized by this article, the department may, by regulation, prescribe administrative fines for violations of this article and of any rules promulgated by the department pursuant to this article."

SECTION 9.

This Act shall become effective on July 1, 2007.

SECTION 10.

All laws and parts of laws in conflict with this Act are repealed.